

**State of California
Office of Administrative Law**

In re:
Board of Forestry and Fire Protection

Regulatory Action:

Title 14, California Code of Regulations

Adopt sections:

Amend sections: 895.1, 1038, 1038.2

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2015-0611-01

OAL Matter Type: Emergency (E)

This emergency rulemaking action implements Assembly Bill 1867 (Chapter 804, Statutes of 2014). The action exempts persons engaged in the cutting or removal of trees, in compliance with Public Resources Code sections 4290 and 4291, which are between 150 and 300 feet of an approved and legally permitted habitable structure, from the plan preparation and submission requirements of Public Resources Code section 4581 and from the completion report and stocking report requirements of Public Resources Code sections 4585 and 4587 in order to address fuel conditions which have been made worse by drought and tree mortality.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on June 22, 2015 and will expire on December 22, 2015. The Certificate of Compliance for this action is due no later than December 21, 2015.

Date: June 22, 2015


Dale P. Mentink
Senior Attorney

For: DEBRA M. CORNEZ
Director

Original: George Gentry
Copy: Thembi Borrás

NOTICE PUBLICATION/REGULATIONS SUBMISSION

See instructions on
reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

| | | | |
|---|---------------------------------|--------------------------|--|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z- | REGULATORY ACTION NUMBER | EMERGENCY NUMBER 2015-0611-01E |
| For use by Office of Administrative Law (OAL) only | | | |
| NOTICE | | REGULATIONS | |
| AGENCY WITH RULEMAKING AUTHORITY Board of Forestry and Fire Protection | | | |

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUN 22 2015

3:36pm

2015 JUN 11 AM 8:47
OFFICE OF
ADMINISTRATIVE LAW

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

| | | | | |
|--|--|--------------------------|------------------------|-------------------------------|
| 1. SUBJECT OF NOTICE | | TITLE(S) | FIRST SECTION AFFECTED | 2. REQUESTED PUBLICATION DATE |
| 3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other | | 4. AGENCY CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional) |
| OAL USE ONLY | ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn | | NOTICE REGISTER NUMBER | PUBLICATION DATE |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

| | | | |
|--|--|--|---------------------------------------|
| 1a. SUBJECT OF REGULATION(S) Protection of Habitable Structures Exemption, 2015 | | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) | |
| 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related) | | | |
| SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) | | ADOPT | |
| | | AMEND | |
| TITLE(S) 14 | | 895.1, 1038 and 1038.2 | |
| | | REPEAL | |
| 3. TYPE OF FILING | | | |
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) | | | |
| <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) | | | |
| <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ | | | |
| <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only | | | |
| 4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) | | | |
| 5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) | | | |
| <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____ | | | |
| 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY | | | |
| <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input checked="" type="checkbox"/> State Fire Marshal | | | |
| <input type="checkbox"/> Other (Specify) _____ | | | |
| 7. CONTACT PERSON Thembi Borrás | | TELEPHONE NUMBER 916-653-9633 | FAX NUMBER (Optional) 916-653-0989 |
| | | E-MAIL ADDRESS (Optional) thembi.borras@bof.ca.gov | |

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE
Thembi Borrás
TYPED NAME AND TITLE OF SIGNATORY
Thembi Borrás, Regulations Coordinator, Board of Forestry and Fire Protection

DATE
May 26, 2015

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 22 2015

Office of Administrative Law

Board of Forestry and Fire Protection

PROTECTION OF HABITABLE STRUCTURES EXEMPTION, 2015

Title 14 of the California Code of Regulations (14 CCR),

Division 1.5, Chapter 4, Subchapter 1, Article 1 and Subchapter 7, Article 2

Amend:

§ 895.1 Definitions

§ 1038 Exemption

§ 1038.2 Exemption Form

895.1

*****"Approved and ~~l~~egally ~~p~~ermitted ~~s~~tructure" means, for the purposes of 14 CCR § 1038(c)(1)-(5), only structures that are designed for human occupancy and garages, barns, stables, and structures used to enclose fuel tanks.

"Approved and Legally Permitted Habitable Structure" means, for the purpose of 14 CCR § 1038(c)(6), a building that contains one or more dwelling units or that can be occupied for residential use. Buildings occupied for residential use include single family homes, multi-dwelling structure, mobile and manufactured homes, and condominiums. A habitable structure does not include commercial, industrial, or incidental buildings such as detached garages, barns, outdoor sanitation facilities, and sheds.

"Appurtenant Road" means a logging road under the ownership or control of the timber owner, timberland owner, timber operator, or plan submitter that will be used for log hauling.*****

*****Note: Authority cited: Sections 4551, 4551.5, 4553, 4561, 4561.5, 4561.6, 4562, 4562.5, 4562.7 and 4591.1, Public Resources Code.

Reference: Sections 4512, 4513, 4525.5, 4525.7, 4526, 4528, 4551, 4551.5, 4561, 4561.6, 4562, 4562.5, 4562.7, 4583.2, 4584, 4591.1, 21001(f), 21080.5, 21083.2 and 21084.1, Public Resources Code; CEQA Guidelines Appendix K (printed following Section 15387 of Title 14 Cal. Code of Regulations), *Laupheimer v. State* (1988) 200 Cal.App.3d 440; 246 Cal.Rptr. 82 and *Joy Road Area Forest and Watershed Association, v. California Department of Forestry & Fire Protection*, Sonoma County Superior Court No. SCV 229850.*****

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***** (c) The cutting or removal of trees in compliance with ~~PRC~~sections §§ 4290 and 4291 which eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuelbreak to reduce fire spread, duration and intensity. The requirements of this subsection shall not supersede the requirements of PRC § 4291.

(1) Only trees within one-hundred-fifty (150) feet from any point of an ~~a~~Approved and ~~l~~Legally ~~p~~Permitted ~~s~~Structure that complies with the California Building Code may be harvested, except as specified in 14 CCR § 1038(c)(6).

(2) The following silvicultural methods may not be used: clearcutting, seed tree removal step, shelterwood removal step.

(3) All surface fuels created by timber operations, within 150 ft of an Approved and Legally Permitted Structure, ~~under the exemption which that~~ could promote the spread of wildfire, including logging slash and debris, deadwood, branches exceeding one (1) inch in diameter, and brush, shall be chipped, burned, or removed within forty-five (45) days from the start of timber operations. This paragraph does not apply to surface fuels created beyond 150 ft pursuant to 14 CCR § 1038 (c)(6).

(4) In addition to the slash treatment described in 14 CCR § 1038(c)(3), the

1 areas of timber operations must meet the vegetation treatment standards in PRC § 4584(ji)(1) to
2 (2)(A) illustrated in Technical Rule Addendum No.4 within one year from the receipt of issuance
3 of ~~N~~notice of ~~A~~acceptance. This paragraph does not apply to 14 CCR § 1038 (c)(6).

4 (5) In addition to the limitations listed in 14 CCR § 1038(b)(1)-(10), the following
5 apply:

6 (A) The timber operator, or if applicable the Registered Professional
7 Forester (RPF), shall provide the Director the tentative commencement date of timber
8 operations on the notice required in 14 CCR § 1038.2. Within a fifteen (15) day period before
9 beginning timber operations, the timber operator shall notify ~~GDF~~ the Department of the actual
10 commencement date for the start of operations. The starting date shall be directed to the
11 designated personnel at the appropriate ~~GDF-Ranger~~ Department Unit Headquarters by
12 telephone, email, or by mail.

13 (B) Timber operations conducted under this subsection shall conform to
14 applicable city or county general plans, city or county implementing ordinances, and city or
15 county zoning ordinances within which the exemption is located. The timber operator, ~~or~~
16 timberland owner, or if applicable the RPF, shall certify that the city or county has been
17 contacted and the exemption conforms with all city or county regulatory requirements.

18 (C) Timber operations may not be conducted without a copy of the
19 Director's notice of acceptance of the exemption at the operating site, except where the Director
20 has failed to act within the 5 working-day review period.

21 (6) Trees that are located from one-hundred-fifty (150) feet up to three-hundred
22 (300) feet from any point of an Approved and Legally Permitted Habitable Structure that
23 complies with the California Building Code may also be cut and removed for the purpose of
24 reducing flammable materials and maintaining a fuelbreak provided the following conditions are
25 met:

1 (A) The post-harvest stand shall be primarily comprised of healthy and
2 vigorous dominant and codominant trees well distributed throughout the treated area and meet
3 the stocking standards consistent with 14 CCR § 913.2 [933.2, 953.2].

4 (B) The Quadratic Mean Diameter (QMD) of trees greater than eight (8)
5 inches dbh in the pre-harvest project area shall be increased in the post-harvest stand.

6 (C) All logging slash created by the timber operations shall be lopped,
7 removed, chipped, piled and burned, or otherwise treated to achieve a maximum post-harvest
8 depth of eighteen (18) inches above the ground within forty-five (45) days from the start of
9 timber operations except for the burning of piles, which shall be accomplished not later than
10 April 1 of the year following their creation, or for piles created on or after September 1, not later
11 than April 1 of the second year following creation. Treatment of surface fuels by burning shall
12 be exempt from the one year time limitations described under 14 CCR § 1038.1.

13 (D) The Notice of Exemption, pursuant to 14 CCR § 1038.2, shall be
14 prepared, signed, and submitted to the Department by a RPF.

15 (E) The Notice of Exemption shall include site class, an estimate of pre
16 and post-harvest QMD and certification by the RPF that, in their professional judgment, post-
17 harvest slash treatment and stand conditions will lead to more moderate fire behavior.

18 (F) The Department shall evaluate the effects of the exemption allowed
19 under 14 CCR § 1038(c)(6) including frequency and state-wide distribution of use, acres
20 treated, compliance, professional judgment regarding post-treatment stand conditions observed
21 relative to moderating fire behavior, and actual performance in the event of a wildfire. The
22 Department shall, annually, report its findings, based on this evaluation, to the Board.*****

23
24 *****Note: Authority cited: Sections 4551, 4553, 4584 and 4584.1, Public Resources Code.

25 Reference: Sections 4516, 4527, and 4584, and 4584.1, Public Resources Code; and *EPIC v.*

1 *California Department of Forestry and Fire Protection and Board of Forestry (1996) 43 Cal.*
2 *App.4th 1011. ******

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4 **1038.2**

5 *****A person submitting an exemption under 14 CCR § 1038 shall submit to the Director a
6 notice of proposed timber operations, prior to commencement of timber operations, on a form
7 provided by the Department. The form shall contain the following information:

8 (a) Type of operation to be conducted.

9 (b) Names, address, and telephone numbers of the timber owner, timberland owners, and
10 timber operator.

11 (c) Legal description of the location of the timber operation.

12 (d) A 7 1/2 minute quadrangle map or its equivalent showing the location of the timber
13 operation.

14 (e) In addition to (a) through (d) above, the following shall be included for exemptions conducted
15 under 14 CCR § 1038(c);

16 (1) The tentative commencement date of timber operations.

17 (2) A certification by the timber operator, ~~or timberland owner~~, or if applicable the
18 Registered Professional Forester (RPF), that the city or county within which the exemption is
19 located has been contacted and the exemption is in conformance with all city or county
20 regulatory requirements.

21 (3) A notification to the landowner stating the fuel treatment requirements and
22 enforcement procedures under this exemption.

23 (4) A signature of the landowner certifying that they are the landowner and have read and
24 understand the information on the exemption form.

25 (5) A larger scale map such as an assessor parcel map showing the location of the timber

1 operation.

2 (f) In addition to (a) through (e) above, the following shall be included for exemptions conducted
3 under 14 CCR § 1038(c)(6):

4 (1) Name, address, telephone and license number of the RPF that prepared and
5 submitted the exemption notice.

6 (2) The site class, an estimate of pre and post-harvest QMD, and a description of the
7 post-harvest stocking standards consistent with 14 CCR § 913.2 [933.2, 953.2].

8 (3) A certification by a RPF that the post-harvest slash treatment and stand conditions will
9 lead to more moderate fire behavior.

10 (4) A certification that the exemption notice has been prepared and submitted by a RPF.

11 (fg) In addition to (a) through (c) above, the following shall be included for exemptions
12 conducted under 14 CCR § 1038(i) and (j):

13 (1) Name, address, telephone and license number of the ~~registered professional forester~~
14 RPF that prepared and submitted the exemption notice.

15 (2) A description of the pre-harvest stand structure and a statement of the post-harvest
16 stand stocking levels.

17 (3) A description of the selection criteria for the trees to be removed or the trees to be
18 retained. The selection criteria shall specify how the trees to be removed, or how the trees to be
19 retained, will be designated.

20 (4) A certification that the exemption notice has been prepared and submitted by a
21 ~~registered professional forester~~ RPF.

22
23 Note: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code. Reference:
24 Sections 4527 and 4584, Public Resources Code.